

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FIRE INSURANCE EXCHANGE,)	
)	
Plaintiff(s),)	No. C08-0367 BZ
)	
v.)	ORDER SCHEDULING
)	JURY TRIAL AND
SUNBEAM PRODUCTS INC.,)	PRETRIAL MATTERS
)	
Defendant(s).)	
_____)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. DATES

Trial Date: **Monday, 8/3/2009, 5-6 days**

Pretrial Conference: **Tuesday, 7/14/2009, 4 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 6/3/2009**

Last Day for Expert Discovery: **Friday, 4/24/2009**

Last Day for Defendant's Expert Disclosure: **Friday, 3/13/2009**

Last Day for Plaintiff's Expert Disclosure: **Friday, 1/16/2009**

Close of Non-expert Discovery: **Friday, 12/19/2008**

2. DISCLOSURE AND DISCOVERY

The parties are reminded that a failure to voluntarily disclose information pursuant to Federal Rule of Civil Procedure 26(a) or to supplement disclosures or discovery responses pursuant to Rule 26(e) may result in exclusionary sanctions. Thirty days prior to the close of non-expert discovery, lead counsel for each party shall serve and file a certification that all supplementation has been completed.

In the event a discovery dispute arises, **lead counsel** for each party shall meet in person or, if counsel are outside the Bay Area, by telephone and make a good faith effort to resolve their dispute. Exchanging letters or telephone messages about the dispute is insufficient. The Court does not read subsequent positioning letters; parties shall instead make a contemporaneous record of their meeting using a tape recorder or a court reporter.

In the event they cannot resolve their dispute, the parties must participate in a telephone conference with the Court **before** filing any discovery motions or other papers. The party seeking discovery shall request a conference in a letter filed electronically not exceeding two pages (with no attachments) which briefly explains the nature of the action and the issues in dispute. Other parties shall reply in similar fashion within two days of receiving the letter requesting the conference. The Court will contact the parties to schedule the conference.

3. MOTIONS

Consult Civil Local Rules 7-1 through 7-5 and this

1 Court's standing orders regarding motion practice. Motions
2 for **summary judgment** shall be accompanied by a statement of
3 the material facts not in dispute supported by citations to
4 admissible evidence. The parties shall file a joint statement
5 of undisputed facts where possible. If the parties are unable
6 to reach complete agreement after meeting and conferring, they
7 shall file a joint statement of the undisputed facts about
8 which they do agree. Any party may then file a separate
9 statement of the additional facts that the party contends are
10 undisputed. A party who without substantial justification
11 contends that a fact is in dispute is subject to sanctions.

12 A Chambers copy of all briefs shall be e-mailed in
13 WordPerfect or Word format to the following address:
14 bzpo@cand.uscourts.gov.

15 4. MEDIATION

16 By agreement of the parties, this matter has been
17 referred for a Mediation. The parties shall promptly notify
18 the Court whether the case is resolved at the Mediation.

19 5. SETTLEMENT

20 This case has been referred for assignment to a
21 Magistrate Judge to conduct a settlement conference in March
22 or April of 2009 in the event the case is not resolved at the
23 Mediation. Counsel will be contacted by that judge's chambers
24 with a date and time for the conference.

25 6. PRETRIAL CONFERENCE

26 Not less than thirty days prior to the date of the
27 pretrial conference, the parties shall meet and take all steps
28 necessary to fulfill the requirements of this Order.

1 Not less than twenty-one days prior to the pretrial
2 conference, the parties shall: (1) serve and file a joint
3 pretrial statement, containing the information listed in
4 **Attachment 1**, and a proposed pretrial order; (2) serve and
5 file trial briefs, Daubert motions, motions *in limine*,
6 proposed findings of fact and conclusions of law, and
7 statements designating excerpts from discovery that will be
8 offered at trial (specifying the witness and page and line
9 references); (3) exchange exhibits, agree on and number a
10 joint set of exhibits and number separately those exhibits to
11 which the parties cannot agree; (4) deliver all marked trial
12 exhibits directly to the courtroom clerk, Ms. Voltz; (5)
13 deliver one extra set of all marked exhibits directly to
14 Chambers; and (6) submit all exhibits in three-ring binders.
15 Each exhibit shall be marked with an exhibit label as
16 contained in **Attachment 2**. The exhibits shall also be
17 separated with correctly marked side tabs so that they are
18 easy to find.

19 No party shall be permitted to call any witness or offer
20 any exhibit in its case in chief that is not disclosed at
21 pretrial, without leave of Court and for good cause.

22 Lead trial counsel for each party shall meet and confer
23 in an effort to resolve all disputes regarding anticipated
24 testimony, witnesses and exhibits. All Daubert motions,
25 motions *in limine*, and objections will be heard at the
26 pretrial conference. Not less than eleven days prior to the
27 pretrial conference, the parties shall serve and file any
28 objections to witnesses or exhibits or to the qualifications

1 of an expert witness. Daubert motions and motion *in limine*
2 shall be filed and served not less than twenty days prior to
3 the conference. Oppositions shall be filed and served not
4 less than eleven days prior to the conference. There shall be
5 no replies.

6 Not less than twenty-one days prior to the pretrial
7 conference the parties shall serve and file requested voir
8 dire questions, jury instructions, and forms of verdict. The
9 following jury instructions from the *Manual of Model Civil*
10 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be
11 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,
12 3.1-3.3. Do not submit a copy of these instructions. Counsel
13 shall submit a joint set of case specific instructions. Any
14 instructions on which the parties cannot agree may be
15 submitted separately. The Ninth Circuit Manual should be used
16 where possible. Each requested instruction shall be typed in
17 full on a separate page with citations to the authority upon
18 which it is based. Proposed jury instructions taken from the
19 Ninth Circuit Manual need only contain a citation to that
20 source. Any modifications made to proposed instructions taken
21 from a manual of model instructions must be clearly indicated.
22 In addition, all proposed jury instructions should conform to
23 the format of the Example Jury Instruction attached to this
24 Order. Not less than eleven days prior to the pretrial
25 conference, the parties shall serve and file any objections to
26 separately proposed jury instructions.

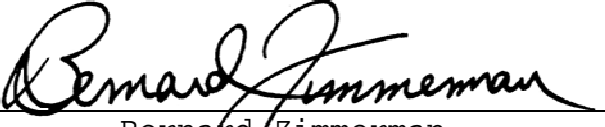
27 Jury instructions that the Court has given in prior cases
28 may be downloaded from the Northern District website at

1 **http:\\www.cand.uscourts.gov.** (Instructions are located on
2 the "Judge Information" page for Magistrate Judge Zimmerman.)
3 The Court will generally give the same instructions in cases
4 involving similar claims unless a party establishes, with
5 supporting authorities, that the instruction is no longer
6 correct or that a different instruction should be given. CACI
7 instructions generally will be given instead of BAJI
8 instructions.

9 All motions, proposed findings of fact and conclusions of
10 law and trial briefs shall be e-mailed in WordPerfect or Word
11 format to the following address: bzpo@cand.uscourts.gov.

12 At the time of filing the original with the Clerk's
13 Office, two copies of all documents (but only one copy of the
14 exhibits) shall be delivered directly to Chambers (Room 15-
15 6688). Chambers' copies of all pretrial documents shall be
16 three-hole punched at the side, suitable for insertion into
17 standard, three-ring binders.

18 Dated: June 3, 2008

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21 Bernard Zimmerman
United States Magistrate Judge

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24 AND PRETRIAL MATTERS.wpd
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ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have

1 made to resolve disputes over anticipated testimony,
2 exhibits and witnesses.

3 (A) Witnesses to be Called. In
4 lieu of FRCP 26(a)(3)(A), a
5 list of all witnesses likely
6 to be called at trial, other
7 than solely for impeachment or
8 rebuttal, together with a
9 brief statement following each
10 name describing the substance
11 of the testimony to be given.

12 (B) Estimate of Trial Time. An
13 estimate of the number of
14 court days needed for the
15 presentation of each party's
16 case, indicating possible
17 reductions in time through
18 proposed stipulations, agreed
19 statements of facts, or
20 expedited means of presenting
21 testimony and exhibits.

22 (C) Use of Discovery Responses. In
23 lieu of FRCP 26(a)(3)(B), cite
24 possible presentation at trial
25 of evidence, other than solely
26 for impeachment or rebuttal,
27 through use of excerpts from
28 depositions, from
interrogatory answers, or from
responses to requests for
admission. Counsel shall
state any objections to use of
these materials and that
counsel has conferred
respecting such objections.

(D) Further Discovery or Motions.
A statement of all remaining
motions, including Daubert
motions.

(4) Trial Alternatives and Options.

(A) Settlement Discussion. A
statement summarizing the
status of settlement
negotiations and indicating
whether further negotiations
are likely to be productive.

(B) Amendments, Dismissals. A

1 statement of requested or
2 proposed amendments to
3 pleadings or dismissals of
4 parties, claims or defenses.

5 (C) Bifurcation, Separate Trial of
6 Issues. A statement of whether
7 bifurcation or a separate
8 trial of specific issues is
9 feasible and desired.

10 (5) **Miscellaneous.**

11 Any other subjects relevant to the trial of the action,
12 or material to its just, speedy and inexpensive
13 determination.
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ATTACHMENT 2

USDC
Case No. CV08-00367 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-00367 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-00367 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-00367 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-00367 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-00367 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
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Date Entered _____

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PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
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DEFT Exhibit No. _____

Date Entered _____

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DEFT Exhibit No. _____

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